

129 B.R. 710
129 B.R. 710, Bankr. L. Rep. P 74,030
(Cite as: 129 B.R. 710)

Motions, Pleadings and Filings.

United States District Court, E.D. New York and
S.D. New York.

In re JOINT EASTERN AND SOUTHERN
DISTRICT ASBESTOS LITIGATION.

United States Bankruptcy Court Southern
District of New York.

In re JOHNS-MANVILLE CORPORATION, et
al., Debtors.

Bernadine K. FINDLEY, as Executrix of the
Estate of Hilliard Findley, Uma Lail
Caldwell, as Executrix of the Estate of Odell
Caldwell, Edward Lindley, Joseph
C. Jones and James William Barnette, Jr., on
behalf of themselves, and all
others similarly situated as beneficiaries of the
Manville Personal Injury
Settlement Trust, Plaintiffs,

v.

Donald M. BLINKEN, Daniel Fogel, Francis H.
Hare, Jr., Christian E. Markey, Jr.
and John C. Sawhill, solely in their capacity as
Trustees, Defendants.

Bankruptcy Nos. 82 B 11656 (BRL)-82 B 11676
(BRL).

Civ. A. No. 90-3973.

June 26, 1991.

EXCERPT

USG B 0236

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APPENDIX C

May 7, 1991

TO: Jack B. Weinstein

FROM Mark A. Peterson

SUBJECT: Estimating total expected costs among
all defendants for indemnity and defense of pending
asbestos claims

This report estimates the total costs that asbestos defendants might be expected to pay for presently pending personal injury claims. The estimates are based primarily on data about past claims settled by the Manville Trust. The report addresses most of the limitations of the data and methods of estimation by using assumptions that provide ranges around the uncertainties created by these limitations. Based on these assumptions, the analyses suggest what defendants' expected costs might be, if asbestos litigation were to continue as it has in the past.

However, asbestos litigation is changing so significantly that the present analyses are unlikely to provide a realistic estimate of what asbestos defendants' future expenses will actually be. In particular, the analyses lack data about apparent changes in the characteristics of claims and in the values placed on claims as major defendants run out of money and new defendants enter. The uncertainties that are created by this lack of data cannot be finessed through use of alternative assumptions. As the conclusion to this report discusses, these uncertainties can only be reduced by further analyses based on additional data. In principle, the total value of pending claims--what all asbestos defendants including Manville might expect to have to pay to defend and compensate only those claims now pending against

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them—can be estimated from information available about past and pending claims against the Manville Trust. The analysis begins with the number and types of claims pending against the Trust. For each asbestos-related disease, the number of pending claims is multiplied by the expected average payment by all defendants for that disease. The expected average payment by all defendants is estimated as the average past payments by the Manville Trust for that disease, divided by historic share of full payments that has been made by the Trust, because the following equations are equivalent:

$$\frac{\text{Total payments} \times \text{Manville share}}{\text{Total payments}} = \text{Manville payment}$$

$$= \text{Manville payments} / \text{Manville share.}$$

The expected payments for each disease are totaled and an estimate of expected defense costs is also added.

Although simple in principle, this calculation is limited in the following ways:

First, some of the past and pending Manville claims involve no other defendants. These "Manville-only" claims received larger payments from the Manville Trust, but do not create liability on the part of other defendants.

Second, some of the claims pending against Manville have already been resolved by codefendants. The total value of all pending asbestos claims includes Manville's liability for these claims, but not liability for the codefendants who have already resolved a claim.

Third, assumptions must be made about the Manville share of liability in order to estimate the total payments for all defendants. The Manville Trust's data for prebankruptcy claims provide an empirical basis for estimating the Manville share for the various types of diseases, but some plaintiffs and codefendants make different assumptions about this share.

Fourth, the argument is widely made that the seriousness or "quality" of claims has declined in recent years. If this is so, either the number of expected value of pending claims must be discounted to reflect that pending cases have less value than claims already settled.

Fifth, alternative estimates can be made of the costs that asbestos defendants must pay to resolve pending claims.

Sixth, significant changes in the litigation

environment have apparently changed the settlement values for claims. Values for resolved claims might not apply to settlements that will be made for pending claims.

This report considers the effects of each of these factors in estimating the total expected costs to all defendants, including Manville, for pending asbestos claims. Most of the limitations do not present insuperable problems in estimating the expected costs of asbestos claimants. Where possible, the report presents a range of estimates based on various assumptions about the factors. But the sixth limitation may be so fundamental that it prevents the analyses from providing a realistic estimate of defendants' likely costs for pending claims. Because we have no systematic information about recent or likely future changes in the character or valuation of asbestos claims, we can only infer the characteristics and values of present cases from information about the past. In effect, the analyses in the report estimate expected costs to asbestos defendants if past litigation practices continue to apply in the future. But as we know, asbestos litigation is currently so unstable that the present estimates may be inapplicable to the changing litigation.

The estimates in this report suggest why asbestos litigation is changing—way the future is unlikely to be like the past. Estimates that are based on empirically supportable assumptions suggest that defendants would face costs that range between \$13 and \$16 billion to indemnify and defend pending asbestos claims if the litigation were to continue unchanged from the past. The report presents other estimates that fell outside of this range, based on alternative assumptions that do not have empirical support. Nevertheless, even the lowest of these alternative estimates suggests that if the litigation were to continue like the past, defendants would face expenses ranging between \$9.7 and \$10.4 billion to indemnify and defend asbestos claims that are already pending. But because the asbestos litigation is changing, defendants' actual expenses might be less than these estimated costs and the costs may be shared with defendants who are new to the litigation.

CLAIMS PENDING AGAINST THE MANVILLE TRUST AND CEFENDANTS

As of mid-April, 1991, there were 136,250 claims pending against the Manville Trust. To project the diseases that are likely to be proven, the Trust adjusted the diseases claimed by claimants on the

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basis of its experience about what diseases were actually proven by claimants who claimed each asbestos-related disease. Table One shows the estimates of the number of claimants who are likely to prove each asbestos disease.

TABLE ONE

CLAIMS PENDING AGAINST MANVILLE TRUST
All Manville Claims

	Number *	% by Disease
Pleural	74,176	54.4
Asbestosis	41,883	30.7
Other cancer	3,590	2.6
Lung cancer	10,926	8.0
Mesothelioma	5,675	4.2
All claims	136,250	

FN* Number of claims reported as of April 10, 1991, by claimed disease. The number for each disease category is an estimate of the number of claimants that will actually have each disease. These estimates are based on the diseases alleged by claimants, with adjustments to reflect the Trust's experience in finding what types of injuries were proven for claimants alleging a particular disease.

The 136,250 includes 990 claims that Manville Trust settled in a class action total for \$44 million. The total settlement has not been allocated across claims nor for disease types. The average settlement for these 990 claims is similar to that for all Manville Trust settlements, so their treatment as pending claims does not materially change any present estimates.

Some of these 136 thousand claimants filed claims only against Manville. The number of Manville-only claims must be estimated, so that estimates of the global asbestos liability do not include projected payments by codefendants for claims that are only against Manville. In addition, the Manville liability for these claims is greater because Manville must pay for claimants' entire injuries.

The portion of pending claims against Manville that are Manville-only can be estimated by looking at the portion of such claims among claims already resolved by the Trust. In order to identify Manville-only claims, we must have data on codefendants' payments. These data are available only for a sample of 6,000 claims filed before the Manville Corporation emerged from bankruptcy, data reviewed in my report of April 11, 1991. Table Two-A estimates the number of pending Manville-only claims based on the percent of Manville-only claims for each type of disease among these prebankruptcy claims.

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TABLE TWO-A

ESTIMATE OF NUMBER OF MANVILLE-ONLY AND JOINT CLAIMS						
	All Manville Claims		Manville-Only % JM *	Number	MANVILLE & Codef	
	Number	% by Disease			Number	% by Disease
Pleural	74,176	54.4	15	11,118	63,058	53.3
Asbestosis	41,883	30.7	9	3,769	38,114	32.2
Other cancer	3,590	2.6	11	395	3,195	2.7
Lung cancer	10,926	8.0	12	1,311	9,615	8.1
Mesothelioma	5,675	4.2	22	1,248	4,427	3.7
All claims	136,250		13	17,841	118,409	

FN* Estimate of the percent of each disease type that is a Manville-only claimed, based on the Manville Trust's experience with prebankruptcy claims. See, Peterson report of April 11, 1991.

As Table Two-A shows, this analysis estimates that approximately 13 percent of claims against Manville are Manville-only. This may be an overestimate. Historically for prebankruptcy claims, Manville-only were greatest among pleural and mesothelioma claims. In turn, pleural claims are more frequent now among pending claims than for prebankruptcy claims. As a result, Table Two-A estimates more Manville-only claims overall among pending claims (13 percent) than the 11 percent among prebankruptcy claims. Contrary to this, claims supervisors for the Manville Trust find fewer rather than more Manville-only claims among recent and presumably future claims. Many prebankruptcy claims involved Manville plant workers who could file only against Manville. A far smaller proportion of recent and pending claims are from Manville plant workers.

Table Two-B attempts to reflect this recent experience, estimating that the proportion of Manville-only claims among pending claimants will be half that for prebankruptcy claims. This assumption yields an estimate of about 6.6 percent Manville-only claims, which is consistent with the expectations of the Trust's claims supervisors.

TABLE TWO-B

ALTERNATIVE ESTIMATE OF NUMBER OF MANVILLE-ONLY AND JOINT CLAIMS

	All Manville Claims		Manville-Only % JM *	Number	Joint Manv & Codef	
	Number	% by Disease			Number	% by Disease
Pleural	74,176	54.4	7.5	5,563	68,613	53.9
Asbestosis	41,883	30.7	4.5	1,885	39,998	31.4
Other cancer	3,590	2.6	5.5	197	3,393	2.7
Lung cancer	10,926	8.0	6.0	656	10,270	8.1
Mesothelioma	5,675	4.2	11.0	624	5,051	4.0

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All claims	136,250	6.6	8,925	127,325
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FN* Estimate of the percent of each disease type that is a Manville-only claimed, based on an assumption that this rate for pending claims will be half the rate found among prebankruptcy claims.

Most codefendants have resolved more claims than the Manville Trust, because of the two extended periods when no Manville claims have been resolved. Estimates of the global liability for pending asbestos claims should not include projected liability for codefendants for cases that they have already settled. However, because codefendants will not provide information about their settlements, it is impossible to determine precisely how many claims have been resolved by each codefendant and the proportion of liability in each case that has been resolved. Table Three compares available information about the number of resolved and pending claims reported by the Manville Trust, Owens Corning Fiberglass and the two defense consortia, the Asbestos Claims Facility and the Center for Claims Resolution. When Manville-only claims are subtracted from the total number of claims against Manville, there is close similarity in the number of claims represented by each.

TABLE THREE

RESOLVED AND PENDING CLAIMS AGAINST MANVILLE AND CODEFENDANTS

	Resolved	Pending	Total
Manville *			
All	26,669	136,250	162,919
Exclude 6.6% JM only	24,636	127,325	151,961
Exclude 13% JM only	23,326	118,409	141,735
CCR and ACF **	63,000	77,000	140,000
OCF ***	60,500	88,000	148,500

FN* Number of settled, Manville-only claims was estimated as 11% for 6207 prebankruptcy claims and respectively 13% and 6.6% of the remaining 20,462 settled claims.

FN** Data provided by Larry Fitzpatrick of the Center for Claims Resolution, February 1991. 18,000 cases were settled by ACF, the rest by CCR.

FN*** Data from the 1990 financial statement for Owens Corning Fiberglass. OCF reported 56,400 resolved and 84,500 pending claims as of December 31, 1990. These were adjusted to April 1991 on the basis of OCF's report of annual rates of new claims and dispositions.

Table Three suggests a range that can be used to estimate the remaining liability among defendants for claims now pending. There are 77,000 claims which have not yet been resolved by the Center for

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Claims Resolution, an entity that represents a substantial proportion of liability among defendants. The 77,000 claims are a minimum estimate of the number of pending claims that remain unsettled by most or all defendants. But this is only a minimum estimate. Although Table Three suggests that the CCR and the defunct ACF might have together resolved around forty thousand claims that are still pending against Manville, not all of these claims will have been resolved by other significant defendants. Owens Corning Fiberglass, which still faces 88,000 claims, presumably faces liability in ten thousand cases that have been resolved by the CCR. The number of claims pending against OCF—88,000—seems a defensible, if conservative estimate of the maximum number of claims that remain unsettled by most or all defendants.

The pattern of claims against and settlements by the various asbestos defendants is complex: Even though CCR has resolved more claims, OCF will have resolved some claims not yet resolved by CCR; CCR will have resolved some of the 88,000 claims pending against OCF; across all defendants there are undoubtedly more than 88,000 claims that are pending against at least one defendant other than Manville; some claims have been filed only against codefendants and not Manville; and other claims have been filed against only a single defendant (i.e. they are like Manville-only claims). This complex pattern of facts could be clarified by research that obtains information about all settlements for a sample of claims pending against the Manville Trust.

However, since such data are not now available, the present assumptions simplify this complexity (1) by treating every claim as having been settled either by all or by no codefendant and (2) by setting a range of 77,000 to 88,000 claims that have been settled by no defendant. Under these assumptions, the Manville Trust would be the only potentially liable defendant for as many as 58,889 claims (136,250 minus 77,000) and it would be solely liable for at least 47,889 claims (136,250 minus 77,000). Note that the 47,889 to 58,889 claims for which the Manville Trust is assumed to be solely liable include both claims where all other defendants settled and other were a claim was made by only against the Manville Trust.

ESTIMATE OF INDEMNITY PAYMENTS FOR

CLAIMS SOLELY AGAINST MANVILLE

Manville's exposure differs between Manville-only claims and joint claims against both Manville and a codefendant. As Table Four shows, the Manville Trust has historically paid more in Manville-only claims than joint claims. The table displays the actual payments among prebankruptcy claims and calculates the ratios of average payments in Manville-only claims to average payments in joint claims.

Unfortunately, there are no available data that would allow us to determine directly the average payments for Manville-only and joint claims among all settled claims. We can identify Manville-only claims only among the six thousand prebankruptcy claims, and we cannot simply assume that the average payments for the two types of claims among prebankruptcy cases also apply to other settled claims. Manville Trust data show that prebankruptcy claims averaged lower settlements than the twenty thousand other claims settled by the Trust.

However, we can estimate the average settlements for Manville-only and joint claims by assuming that the ratios of the averages observed for prebankruptcy claims were maintained for all settled claims. To estimate the averages, we also have to assume what proportion of all claims settled by the Manville Trust were Manville-only. Table Four provides estimates of the average payments to Manville-only and joint claims under the two assumptions of the number of Manville-only claims, 13 and 6.6 percent.

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TABLE FOUR

RATIO OF PAYMENTS IN MANVILLE ONLY AND JOINT CLAIMS *							
(Payments in \$ Thousands)							
Prebankruptcy Claims				13% Manv Only		6.6% Manv Only	
Average	Payment	Average Payment		Average Payment		Average Payment	
	Joint	Manville	Ratio	Joint	Manville	Joint	Manville
	Claim	Only		Claim	Only	Claim	Only
Pleural	18	24	1.34	23	31	23	31
Asbestosis	29	43	1.50	36	54	37	56
Other cancer	36	53	1.45	41	59	42	61
Lung cancer	67	113	1.68	68	115	71	119
Mesothelioma	112	209	1.87	124	232	135	253

FN* Ratio of payments in Manville-only divided by payments in joint claims among 6,207 prebankruptcy claims. "13% Manv Only" and "6.6% Manv Only" estimate the average settlements for Manville-only and joint claims among all 26,669 claims settled by the Manville Trust, assuming that ratios for prebankruptcy claims apply to all settled claims and assuming respectively that 13 percent and 6.6 percent of settled claims were Manville-only.

The total expected liability of asbestos defendants includes both liability among all defendants--including Manville--for cases that remain completely unsettled (i.e. the 77,000 to 88,000 claims) and the Manville Trust's liability for pending asbestos claims where it is solely liable. Table Five estimates the latter, separating the Trust's liability for Manville-only claims and claims where all other defendants have settled. The table presents estimates of the value of Manville-only claims for each of the two alternative assumptions about the number of such claims using estimates of past settlement averages shown on Table Four. The table presents four estimates of payments expected from Manville for claims already settled by all other defendants under the two assumptions that 77,000 or 88,000 pending claims remain unsettled by other defendants and the two assumptions about the number of Manville-only claims.

TABLE FIVE

ESTIMATE OF VALUE OF CLAIMS SOLELY AGAINST MANVILLE
(Total Values in \$ Millions; Average Values in \$ Thousands)

	Where Codefendants Have Settled *						Manville Only	
	77,000		Unsettled 88,000		Unsettled			
	Avg		Total		Total		Avg	Total
	Value	Number	Value	Number	Value	Number	Value	Value
13% Manv.-Only								
Pleural	23	22,052	507	16,194	372	11,118	31	345
Asbestosis	36	13,329	480	9,788	352	3,769	54	204
Other cancer	41	1,117	46	820	34	395	59	23

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Lung cancer	68	3,362	229	2,469	168	1,311	115	151
Mesothelioma	124	1,548	192	1,137	141	1,248	232	290
All claims		41,408	1,454	30,408	1,067	17,841		1,013
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6.6% Manv.-Only								
Pleural	23	27,119	624	21,191	487	5,563	31	174
Asbestosis	37	15,809	585	12,354	457	1,885	56	105
Other cancer	42	1,341	56	1,048	44	197	61	12
Lung cancer	71	4,059	288	3,172	225	656	119	78
Mesothelioma	135	1,996	269	1,560	211	624	253	158
All claims		50,324	1,822	39,325	1,424	8,925		527
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FN* Table estimates separately the values of (1) claims where all defendants other than Manville have settled and (2) where a claim was filed only against Manville. The expected average payments by Manville for these two types of cases are shown in Table Four. The Table presents estimates under two assumptions about the number of pending Manville-only claims and under two estimates of the number of claimants who have not yet settled with any defendant: With 77,000 claims unsettled by any defendant, Manville faces 41,408 claims where all other defendants have settled if 13 percent of its claims are Manville-only and 50,324 claims settled by all other defendants if 6.6 percent are Manville-only; with 88,000 claims Manville faces respectively 30,408 and 39,325 claims settled by all other defendants.

ESTIMATE OF INDEMNITY PAYMENTS FOR CLAIMS AGAINST ALL DEFENDANTS

The next analysis estimates the total amount that all defendants, including Manville, can be expected to pay for the 77,000 to 88,000 claims in which claimants have yet to receive substantial settlements. This analysis requires assumptions about the average payments that all defendants can be expected to make for pending claims. These assumptions about payments for pending claims are the most troublesome element of the analysis. Assumptions about average payments that will be made for pending claims can only be made by extrapolating from payments that have been made in previously resolved claims. The extrapolations are problematic, if the bases for settling claims have or will change. The extrapolations would then provide little information about what defendants will actually pay, but would at most indicate what defendants' expected payments would have been if past practices had continued into the future. Because the environment of asbestos litigation is changing significantly in ways that likely effect how claims are evaluated, this criticism is pertinent and

fundamental for the present analyses. The last section of this report looks more closely at this issue and at ways to carry out estimates in light of changes in the asbestos litigation.

The next sections put aside this criticism in order to evaluate pending claims by extrapolating from settlement values for past claims. These sections present analyses based on alternative assumptions (1) about how to estimate the unknown total amount of payments by all defendants from the known amount of payments by the Manville Trust and (2) about the comparability between previously resolved and pending claims.

Table Six presents estimates of full value of pending claims, i.e. the total amount that all defendants might be expected to pay on average for claims for each disease. The estimates have been calculated by dividing the average past payments by the Manville Trust for each disease by the historic share of full payments made by the Trust for the disease. The Manville Trust's share of payments was derived from the Trust's data for prebankruptcy claims. Those data indicate that when Manville-

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only claims are excluded, the Manville Trust paid between 28 percent and 33 percent of the total payments by all defendants, depending upon the type of disease (see, Peterson Memorandum of April 11, 1991). The estimates on Table Six assume that the Manville shares found for prebankruptcy claims apply to payments for pending claims, an assumption that is controversial (Table 14, below presents estimates of the expected payments by defendants based on alternative assumptions about the Manville share). The estimates on Table Six are provided for both of the assumptions that 13 or 6.6 percent of pending claims are Manville-only. Note that analyses do not assume that the Manville Trust will continue to pay between 28 and 33 percent of all payments by the Trust. The historic Manville shares are used simply to estimate the total expected payment by all defendants from data on historic payments by the Manville Trust.

TABLE SIX

EXPECTED AVERAGE PAYMENTS BY ALL DEFENDANTS *
(Average Values in \$ Thousands)

	13% Manv Only		Full	6.6% Manv Only		Full
	Manville Avg Value	Share		Manville Avg Value	Share	
Pleural	23	.31	74	23	.31	74
Asbestosis	36	.30	120	37	.30	123
Other cancer	41	.33	124	42	.33	127
Lung cancer	68	.31	219	71	.31	229
Mesothelioma	124	.28	442	135	.28	482

FN* The Table estimates payments by all defendants, including Manville. The Manville shares for disease types are based on empirical evidence of the share of Manville Trust payments for prebankruptcy claims (see, Peterson Memorandum of April 11, 1991). Manville Average Values are from Table Four. Full Average Value is calculated as follows:

$$(\text{Manville Avg. Value}) / (\text{Manville Share})$$

Table Seven estimates the total amount that all defendants, including Manville, can be expected to pay for the 77,000 to 88,000 claims where claimants have received no settlements, assuming that claimants will receive on average the amounts shown on Table Six.

As Table Seven shows, estimates of the full value of pending claims range between \$8.9 and \$10.2 billion, assuming that 13 percent of claims against the Manville Trust are Manville-only. The full value ranges from \$9.2 to

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\$10.5 billion, assuming 6.6 percent Manville-only claims. All estimates are based on the assumption that claims now pending will be valued in the same manner as were resolved claims. The estimation of defendants' payments for these claims would vary if the average payments shown on Table Six were calculated using different assumptions about the Manville share. Estimations of the full value of pending claims using different assumptions about the Manville share are presented in Tables Fifteen and Sixteen below.

TABLE SEVEN

ESTIMATED VALUE OF CLAIMS PENDING AGAINST ALL DEFENDANTS *
(Total Values in \$ Millions; Average Values in \$ Thousands)

	Full Average Value	77,000 Claims Number of Claims	Total Value	88,000 Claims Number of Claims	Total Value
13% Manville Only					
Pleural	74	41,006	3,034	46,864	3,468
Asbestosis	120	24,785	2,974	28,326	3,399
Other cancer	124	2,078	258	2,374	294
Lung cancer	219	6,253	1,369	7,146	1,564
Mesothelioma	442	2,879	1,273	3,290	1,454
All claims		77,001	8,908	88,000	10,179
6.6% Manv. Only					
Pleural	74	41,494	3,070	47,422	3,509
Asbestosis	123	24,189	2,975	27,644	3,400
Other cancer	127	2,052	261	2,345	298
Lung cancer	229	6,2121	1,422	7,098	1,625
Mesothelioma	482	3,055	1,473	3,491	1,683
All claims		77,001	9,201	88,000	10,515

FN* The Table estimates the total amount that will be paid by all defendants, including Manville, for 77,000 and 88,000 claims, respectively, that have not been settled by any defendant. Full Average Value from Table Six. Number of claims is shown for low and high estimates of number of pending claims that remain unsettled (see, text accompanying Table Three). The number of claims for each disease is the same as for "Manville & Codef" on Tables Two-A and Two-B.

TOTAL INDEMNITY PAYMENTS FOR ALL PENDING CLAIMS, BASED ON HISTORIC VALUES

Table Eight calculates the total expected payments by asbestos defendants for indemnity of pending claims by adding the Manville Trust's expected payments for claims where it is solely liable to the expected payments by all defendants, including Manville, for cases that remain completely unsettled. Estimates of the total indemnity payments are presented for the two assumptions of the number of Manville-only claims and for the alternatives of

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77,000 and 88,000 claims that are assumed to have been settled with no defendant. All of the estimates on Table Eight are based on assumptions that the payments by all defendants, including Manville, will average 3.33 times payments by the Manville Trust and that the values placed on past claims should continue to apply to pending claims. Under these assumptions, the total expected indemnity payments by all asbestos defendants ranges between \$11.4 and \$12.5 billion, if those claims are to be valued as they had been in the past. These estimates represent only the expected payments to claimants and do not include the anticipated costs for defense or other resolution of these claims.

TABLE EIGHT

ESTIMATED VALUE OF PENDING CLAIMS ACROSS ALL DEFENDANTS
BASED ON FULL HISTORIC VALUE
(Total Values in \$ Millions)

	Claims w/o Settlement	
	77,000	88,000
13% of Claims Are Manville Only		
Claims Against All Defendants	8,908	10,179
Claims Solely Against Manville	1,454	1,067
Settled by Other Defendants	1,013	1,013
Manville-only Claims		
Total Expected Liability	11,375	12,259

6.6% of Claims Are Manville Only		
Claims Against All Defendants	9,201	10,515
Claims Solely Against Manville	1,822	1,424
Settled by Other Defendants	527	527
Manville-only Claims		
Total Expected Liability	11,550	12,466

Of course, even setting aside the fundamental criticism that historic values might not continue to apply, the estimates summarized on Table Eight cannot be regarded as matters of certainty. The assumptions that underlie these analyses are simply reasonable projections about the types, numbers and values of claims. Estimates of the total indemnity payments for pending cases will vary under different assumptions. Indeed there is a widely held perception that many pending cases are not as serious as those cases already resolved, which argues that the analyses in Table Eight overstate the total indemnity payments. Similarly, opposing parties to the litigation argue that the Manville share is greater or less than the average 30 percent

assumed for the present analyses.

The analyses below examine the total indemnity payments under assumptions (1) that pending claims present less serious injuries than those already resolved and (2) that the Manville share is respectively 25 percent and 40 percent of full payments by all defendants. The analyses then estimate the total cost of both indemnity and defense of pending claims, under two assumptions about defense costs.

ADJUSTMENT FOR THE APPARENT
DECLINE IN THE SERIOUSNESS OF CLAIMS

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Many participants in asbestos litigation--judges, defendants and plaintiffs' lawyers--observe that taken as a whole, claims pending against asbestos defendants are less serious than those already resolved. If this is the case, then total indemnity payments by asbestos defendants would be overestimated by simply using past average payments to project future claims. Again, data could be collected on the characteristics of a sample of resolved and pending claims to see if and how claims have changed. But in the absence of such data, the present analyses can only make assumptions about the comparability of resolved and pending claims.

The analyses described above in Tables Six through Eight assume that resolved and pending claims are comparable and that historic values could be directly applied to pending claims. The analyses in this section are based on the assumption that as a whole pending claims are less serious than resolved claims. These analyses use an adjustment to reflect a decline in seriousness of claims that is consistent with the projections that estimated the future performance of the Manville Trust.

Negotiations over the restructuring of the Manville Trust revealed a broadly-held perception that many asbestosis claimants would be unable to prove an asbestos-related disease. Projections of the expected payments to claimants under the reorganized trust assumed that as many as 20,000 claims pending against the Manville Trust (approximately 15 percent of such claims) might be subject to dismissal for failure to state a cause of action. Table Nine shows how 20,000 such nonclaims might be distributed across claims pending against the Manville Trust. The Table assumes relatively few nonclaims among claimants alleging an asbestos-related cancer, based on the Trust's experience showing that few cancer claims failed to involve some type of asbestos-related disease. The remainder of the projected 20,000 nonclaims are distributed between pleural and asbestosis claims so that the assumed rate of nonclaims is four times greater for pleural than asbestosis claims.

TABLE NINE

CLAIMS AGAINST THE MANVILLE TRUST, ADJUSTING FOR CLAIMS
THAT MIGHT BE UNABLE TO PROVE AN ASBESTOS RELATED INJURY

Reported	Assumed	Estimated
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	Number Pending	Nonclaims	Number Compensible
Pleural	74,176	17,472	56,704
Asbestosis	41,883	2,466	39,417
Other cancer	3,590	18	3,572
Lung cancer	10,926	33	10,893
Mesothelioma	5,675	11	5,664
All claims	136,250	20,000	116,250

FN* This adjustment represents an assumption that as many as 20,000 or approximately 15 percent of claims pending against the Manville Trust might fail to provide evidence of an asbestos-related disease. The number of nonclaims for cancer claims represent historical experience of the Manville Trust of the proportion of such claims that do not provide evidence of an injury. The numbers for pleural and asbestosis claims assume that the frequency of nonclaims will be four times greater for pleural disease than for asbestosis.

Of course, there is no reason to believe that this assumption of 20,000 nonclaims is precisely correct. Rather, the assumption provides a means of representing the argument that, taken as a whole, present claims involve less serious injuries. The analyses in this section exclude these 20,000 claims and then use the average payments for past claims to estimate the value of the remaining 116,250 claims pending against the Manville Trust. The adjustment is admittedly arbitrary: it may either overadjust or underadjust for any changes in the seriousness of claims. Unfortunately, without empirical information about the changing characteristics of claims, any adjustments will be arbitrary.

Table Ten shows the number of Manville-only and joint claims expected for the pending 116,250 claims that remain. Because the percent of Manville-only claims has little impact on estimated global liability, all remaining analyses assume that 13 percent of claims are Manville-only.

TABLE TEN

ESTIMATE OF NUMBER OF MANVILLE-ONLY AND JOINT CLAIMS
AFTER ELIMINATION OF 20,000 ASSUMED NONCLAIMS

	Estimated		Manville Only		Joint Manv & Codef	
	Number	% by Disease	% JM Only	Number	Number	% by Disease
Pleural	56,704	48.8	15	8,506	48,198	47.6
Asbestosis	39,417	33.9	9	3,548	35,869	35.4
Other cancer	3,572	3.1	11	393	3,179	3.1
Lung cancer	10,893	9.4	12	1,307	9,586	9.5
Mesothelioma	5,664	4.9	22	1,246	4,418	4.4
All claims	116,250		13	15,000	101,250	

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Table Eleven estimates the Manville Trust's liability for pending claims in which it is solely liable, after elimination of the assumed 20,000 nonclaims. Again, the table separates the Trust's Manville-only liability from liability for claims where all other defendants have settled.

TABLE ELEVEN

ESTIMATE OF VALUE OF CLAIMS SOLELY AGAINST MANVILLE,
AFTER ELIMINATION OF 20,000 ASSUMED NONCLAIMS
(Total Values in \$ Millions; Average Values in \$ Thousands)
Where Codefendants Have Settled * Manville Only

	77,000 Unsettled			88,000 Unsettled				
	Avg Value	Number	Total Value	Number	Total Value	Number	Avg Value	Total Value
Pleural	23	16,855	388	12,378	285	8,506	31	264
Asbestosis	36	12,544	452	9,212	332	3,548	54	192
Other cancer	41	1,112	46	816	33	393	59	23
Lung cancer	68	3,352	228	2,462	167	1,307	115	150
Mesothelioma	124	1,545	192	1,135	141	1,246	232	289
All claims		35,408	1,306	26,002	958	15,000		918

Table presents analyses under two alternative estimates of the total number of claim unsettled by all defendants: 77,000 claims which implies that the Manville Trust faces another 35,408 claims where all other defendants have settled [101,250 (compensible Manville joint claims, Table Ten) minus 65,842 (compensible claims unsettled by defendants, Table Twelve)]; and 88,000 claims which implies another 26,002 Trust claims settled by all other defendants [101,250 minus 77,248].

TABLE TWELVE

ESTIMATED VALUE OF CLAIMS PENDING AGAINST ALL DEFENDANTS,
AFTER ELIMINATION OF 20,000 ASSUMED NONCLAIMS
(Total Values in \$ Millions; Average Values in \$ Thousands)

Codefs	77,000 Claims			88,000 Claims		
	Avg Value	Number of Claims	Total Value	Number of Claims	Total Value	Total Value
Pleural	74	31,341	2,319	35,818	2,650	
Asbestosis	120	23,308	2,797	26,638	3,197	
Other cancer	124	2,041	253	2,333	289	
Lung cancer	219	6,255	1,370	7,149	1,566	
Mesothelioma	442	2,897	1,280	3,311	1,463	
All claims		65,842	8,019	75,248	9,165	

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FN* The Table estimates the total amount that will be paid by all defendants, including Manville, for 77,000 and 88,000 claims, respectively, that have not been settled by any defendant. It assumes that the proportion of claims that are compensable is the same as for all joint Manville claims. This proportion is the number of compensable claims (101,250 from Table Ten) divided by the total number of joint Manville claims (118,409 from Table Two-A) i.e. $101,250 / 118,409 = .86$. Among 77,000 pending claims, 86 percent of 65,842 are compensable and 11,158 are assumed to be unable to state a cause of action. Among 88,000 claims, 75,248 are assumed to be compensable and 12,752 do not state a cause of action. The percent of claimants with each type of disease is the same as for all Manville joint claims (Table Ten).

Table Twelve shows the full value of pending claims after the 20,000 assumed noncompensable claims are excluded. The elimination of these assumed noncompensable claims reduces the total of the historically based value for pending claims about ten percent, from between \$11.4 to \$12.3 billion when the cases are included (Table Eight) to between \$10.2 to \$11.0 billion when the cases are excluded (Table Thirteen). Note that while the estimates on Table Thirteen provide an adjustment for possible changes in the seriousness of pending asbestos claims, they make no provision for possible changes in valuations of claims. The estimates assume that the values placed on claims in the past will continue to apply to the settlements of claims now pending.

TABLE THIRTEEN

ESTIMATED VALUE OF PENDING CLAIMS ACROSS ALL DEFENDANTS
AFTER ELIMINATION OF 20,000 ASSUMED NONCLAIMS
(Total Values in \$ Millions)

	Claims w/o Settlement	
	77,000	88,000
Claims Against All Defendants	8,019	9,165
Claims Solely Against Manville		
Settled by Other Defendants	1,306	958
Manville-only Claims	918	918
Total Expected Liability	10,243	11,041

ALTERNATIVE ASSUMPTIONS ABOUT THE
MANVILLE SHARE

The analyses of the historically-based value of pending claims have been based on the assumption that the full payments by all defendants average about three-and-one-third times the Manville payment, based on the Manville share of 30 percent of prebankruptcy payments. This assumption is supported by empirical analysis of the Manville Trust's data for prebankruptcy claims.

Others argue that the Manville share has been more

or less than 30 percent, which would mean that full value of claims is less or greater than the values assumed in the analyses. The following analyses estimate the full value of claims under two alternatives: an assumption that the full value of claims is four times the Manville payments (assuming a Manville share of 25 percent) and an assumption that the full value of claims was two-and-one-half times the Manville payments (assuming a Manville share of 40 percent). These alternative assumptions have no empirical support, but they provide means for examining the upper and lower bounds of what all defendants could expect to pay

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for pending asbestos claims based on historic values.

Table Fourteen shows estimates of expected average payments by all defendants, including Manville, under the three alternative assumptions about the Manville share. Again, these estimates have nothing to do with the share of payments that the Manville Trust might make in cases now pending. The assumptions about the Manville share are used only to provide alternative estimates of the total payments that all defendants might be expected to make for pending claims. This report does not consider what part of these payments might be borne by the Manville Trust. As Table Fourteen shows, defendants' expected payments decline as the Manville share increases.

TABLE FOURTEEN

DEFENDANTS' EXPECTED PAYMENTS UNDER ALTERNATIVE
ESTIMATES OF THE MANVILLE SHARE *
(Average Values in \$ Thousands)

	Alternative Estimates					
	Manv Average Value	Manv Share	Full Avg Value	Manv Share	Full Avg Value	Manv Share
Pleural	23	.31	74	.26	88	.41
Asbestosis	36	.30	120	.25	144	.40
Other cancer	41	.33	124	.28	146	.44
Lung cancer	68	.31	219	.26	262	.41
Mesothelioma	124	.28	442	.23	539	.37
All claims		.30		.25		.40

FN* Full Average Value estimates payments by all defendants, including Manville. The Manville shares for disease types when Manville share averaged 30 percent are based on empirical evidence of the share of Manville Trust payments for prebankruptcy claims (see, Peterson Memorandum of April 11, 1991). Manville shares for disease types when Manville share is assumed to average 25 percent were 5/6 of the observed averages for diseases at an average Manville share of 30 percent. Share for disease types when the Manville share is assumed to average 40 percent are 4/3 of the observed averages at 30 percent. Defendants' Average Value is calculated as follows:

$$(\text{Manville Avg. Value}) / (\text{Manville Share})$$

Tables Fifteen and Sixteen estimate an upper and lower bound on the total values of pending asbestos claims, when those claims are valued as they have been in the past. Table Fifteen estimates a lower bound on defendants' payments by assuming that the average payments by all defendants will be 2.5

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times the averages paid by the Manville Trust and by eliminating 20,000 claims that are assumed to be noncompensible. In contrast, Table Sixteen estimates an upper bound on defendants' payments by assuming that the average payments by all defendants will be 4 times the averages paid by the Manville Trust and by including all pending claims, including the 20,000 claims.

TABLE FIFTEEN

LOWER BOUND ESTIMATE OF VALUE OF PENDING CLAIMS AGAINST DEFENDANTS

(Total Values in \$ Millions; Average Values in \$ Thousands)

	Full Average Value	77,000 Claims Number of Claims	Total Value	88,000 Claims Number of Claims	Total Value
Pleural	56	31,341	1,755	35,818	2,006
Asbestosis	90	23,308	2,098	26,638	2,397
Other cancer	93	2,041	190	2,333	217
Lung cancer	166	6,255	1,038	7,149	1,187
Mesothelioma	335	2,897	970	3,311	1,109
All claims		65,842	6,051	75,248	6,916

FN* The Table estimates the total amount that will be paid by all defendants, including Manville, for 77,000 and 88,000 claims, respectively, that have not been settled by any defendants. It assumes that full average value (i.e. average amount paid by all defendants for each disease) will be 2.5 times Manville payments for non-Manville-only claims, that 11,158 of 77,000 claims are noncompensible and that 12,752 of 88,000 claims are noncompensible.

TABLE SIXTEEN

UPPER BOUND ESTIMATE OF VALUE OF PENDING CLAIMS AGAINST DEFENDANTS

(Total Values in \$ Millions; Average Values in \$ Thousands)

	Full Average Value	77,000 Claims Number of Claims	Total Value	88,000 Claims Number of Claims	Total Value
Pleural	88	41,006	3,609	46,864	4,124
Asbestosis	144	24,785	3,569	28,326	4,079
Other cancer	146	2,078	303	2,374	347
Lung cancer	262	6,253	1,638	7,146	1,872
Mesothelioma	539	2,879	1,552	3,290	1,773
All claims		77,001	10,671	88,000	12,195

FN* The Table estimates the total amount that will be paid by all defendants, including Manville, for 77,000 and 88,000 claims, respectively, that have not been settled by any defendants. It assumes that full average value (i.e. average amount paid by all defendants for each disease) will be 4 times Manville payments for non-Manville-only claims. No claims are eliminated as

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being noncompensable.

Although there are reasons to be skeptical about assumptions underlying the upper and lower bound estimates, these analyses set a range of between around \$8 billion to over \$14 billion when pending claims are valued as they have been in the past (Table Seventeen). This range understates what these pending claims would have cost asbestos defendants in the past environment of asbestos litigation, because the estimates do not include the significant expenses for defending cases.

TABLE SEVENTEEN

UPPER AND LOWER BOUND ESTIMATES OF VALUE OF PENDING CLAIMS ACROSS ALL DEFENDANTS (Total Values in \$ Millions)		
	Claims w/o Settlement 77,000	88,000
LOWER BOUND:		
Claims Against All Defendants	6,051	6,916
Claims Solely Against Manville		
Settled by Other Defendants	1,306	958
Manville-only Claims	918	918
Total Expected Liability	8,275	8,792
UPPER BOUND:		
Claims Against All Defendants	10,671	12,195
Claims Solely Against Manville		
Settled by Other Defendants	1,454	1,067
Manville-only Claims	1,013	1,013
Total Expected Liability	13,138	14,275

THE TOTAL COSTS OF INDEMNITY AND DEFENSE

A RAND Corporation study of asbestos litigation prior to the Manville bankruptcy found that 33 percent of defendants' expenditures went for defense and costs in processing claims. Only 67 percent of those payments went to claimants. So far the present analyses have estimated what defendants might have to pay to claimants for pending cases without considering defense expenses--they look only at the 67 percent.

Although the RAND research examined an earlier period of asbestos litigation, the study's findings about defense expenses seem to apply to defendants who continue an active defense. Most defendants will not reveal the precise amount of their defense expenses, but some indicate informally that defense expenses run at least 30 percent of all their expenditures on asbestos litigation.

CONCLUSIONS

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Table Eighteen adds defense costs to four alternative estimates of the historically based values of pending claims. Although uncertain, the best evidence is that defense costs have represented about 33 percent of all expenditures by defendants (i.e. 33 percent of the total of indemnity payments plus defense costs). Similarly, the only empirical evidence suggests that payments by all defendants, including Manville, have averaged 3.33 times the Manville Trust's payments. Analyses using these assumptions provide the most reasonable estimates of what the defense and indemnification of pending asbestos claims would cost defendants, including Manville, if claims continue to be defended and settled on the same bases as they have in the past--total costs ranging between \$13.0 and \$16.1 billion. Even under assumptions that minimize these estimates--that total payments by all defendants including Manville will be only 2.5 times payments by the Manville Trust, that 20,000 pending claims are noncompensible, that litigation costs will only be 30 percent of all expenditures--the analyses suggest that asbestos defendants might have reasonably expected to spend between \$9.7 and \$10.4 billion for pending claims if the environment of asbestos litigation remained unchanged.

TABLE EIGHTEEN

DEFENDANTS' FULL COSTS OF INDEMNITY AND DEFENSE *
(Total Values in \$ Billions)

	Indemnity		Defense Costs			
	77,000	88,000	30%	30%	33%	33%
	77,000	88,000	77,000	88,000	77,000	88,000
Empirically Based						
Adjust for nonclaims	10.2	11.0	12.4	13.6	13.0	14.2
Full historic value	11.4	12.3	14.2	15.4	14.8	16.1
Lower Bound						
Adjust for nonclaims	8.3	8.8	9.7	10.4	10.2	10.9
Upper Bound						
Full historic value	13.1	14.3	16.7	18.3	17.3	19.1

FN* These calculations assume that defense costs for the Manville Trust will be 10 percent and that the Trust will pay \$1.6 billion in indemnification to present claimants (35 percent of their full liability). For remaining liability, calculations assume alternatively that indemnification represents 70 percent or 67 percent of the total expenses of defendants.

But asbestos litigation is changing and will likely change even more significantly, in great part because the litigation is so costly. More than a dozen defendants who participated in the past litigation have gone into bankruptcy or effectively

disappeared because their assets have been exhausted or compromised. To an uncertain degree, the remaining defendants may be required to pick up payments previously made by bankrupt defendants--this report makes no attempt to assess the legal

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requirements or effects of alternative theories of contribution. To an uncertain degree, some of the historic value of asbestos claims will be lost because there is no solvent defendant to provide payment. The litigation has been changed by the addition of new defendants, many of whom have significant assets. These new defendants might absorb appreciable portions of the costs of asbestos litigation or their costs might be limited if their liability runs to only a small portion of asbestos claimants. Defense costs may shrink as defendants adopt more efficient practices and as claims facilities assume a bigger role.

There is broad recognition that the values of claims have changed and are likely to change further in the future, even though there is no agreement on how values have changed. Some participants report that the values of claims have decreased as plaintiffs become willing to take what they can get now from financially-strapped defendants. Others report that values have increased because plaintiffs demand more when payments are made over time rather than in one lump sum. The greater use of consolidated trials, class actions and other aggregative procedures undoubtedly affect values, but in uncertain directions. These procedures could decrease the values of claims, following the general pattern of litigation that claims settled in groups receive less money than those settled individually. Or these procedures might increase the values of claims, because far more claims now appear at the courthouse steps. The values of claims and defense costs could be modified greatly if plaintiffs and defendants agree upon global resolution of claims against one or more defendants. Because the valuation of asbestos claims seems to have changed and seems likely to continue to change, the analyses of this report cannot be regarded as realistic projections of expected payments by asbestos defendants. The estimates are based on the extrapolation of past values that may well not apply to the settlement of pending claims.

But while the analyses of the present report are limited in several important ways, these limitations can be substantially addressed by further research. The analyses suffer from the absence of critical information, primarily about the nature of present claims and the patterns of payments by various defendants. These data may become available as the Manville Trust and the Selected Counsel for the Beneficiaries collect data that they need to allocate

assets between present and future claimants. But more fundamentally, the present analyses are ignorant of recent and likely future changes in asbestos litigation. Realistic estimates of the likely costs of asbestos litigation require that analyses such as those in this report be done in conjunction with analyses of defendants' assets that will be called upon to pay those costs, and that both sets of analyses draw upon current information about the nature and value of claims.